

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Richard P. Krasnow
Adam P. Strochak

Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re	:	Chapter 11 Case No.
	:	
LEXINGTON PRECISION CORP., <u>et al.</u> ,	:	08-11153 (SCC)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X		

**DEBTORS' OBJECTION TO PROOF OF CLAIM
FILED BY WACKER CHEMICAL CORP. (CLAIM NO. 246)**

TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

Lexington Precision Corporation ("Lexington"), and its wholly-owned subsidiary, Lexington Rubber Group, Inc., each as debtors and debtors-in-possession (together, the "Debtors"), submit this objection (the "Objection") to Proof of Claim No. 246 (the "Wacker Claim"), filed by Wacker Chemical Corp. ("Wacker") against Lexington Rubber Group, Inc., and a proposed order attached hereto as Exhibit B, and in support of the objection respectfully represent as follows:

Background

1. On April 1, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States

Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. On April 11, 2008, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), appointed the statutory committee of creditors (the “**Creditors’ Committee**”).

4. Pursuant to an order of the Court, dated, April 2, 2008, the Debtors retained Epiq Bankruptcy Solutions, LLC (“**Epiq**”), as the Debtors’ claims agent.

5. On June 13, 2008, the Debtors filed their schedules and statements of financial affairs (collectively, the “**Schedules**”) [Docket Nos. 174, 176].

6. By order, dated June 30, 2008, the Court established August 15, 2008 at 5:00 p.m. (prevailing Eastern Time) as the deadline for each person or entity other than a Government Unit (as defined by section 101(27) of the Bankruptcy Code), that asserts a claim (as defined by section 101(5) of the Bankruptcy Code) against any of the Debtors that arose prior to April 1, 2008 to file a proof of claim.

Jurisdiction

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Wacker Claim

8. On or about August 13, 2008, Wacker filed the Wacker Claim, a copy of which is attached hereto as **Exhibit A**. The Wacker Claim seeks payment from Lexington Rubber Group, Inc. for “goods sold” in the aggregate amount of \$610,753.78. Wacker is a supplier of materials used in the production of rubber parts.

Objection to the Wacker Claim

9. The Debtors do not dispute that they purchased goods from Wacker and that the amount of the Wacker Claim remains unpaid, but object to the Wacker Claim because any liability to Wacker is subject to setoff in whole or in part due to the counterclaim for damages set forth below.

10. Section 502(b)(1) of the Bankruptcy Code provides that a claim shall not be allowed if it is “unenforceable” against the debtor in accordance with applicable law. 11 U.S.C. § 502(b)(1). The Debtors have valid counterclaims for which they have the right of setoff under statute or common law. The Debtors’ right to set off mutual obligations renders the Wacker Claim unenforceable under section 502(b)(1).

Counterclaim Against Wacker

11. The Debtors assert this counterclaim for damages and assert the right to setoff damages owed to the estate as a defense to the Wacker Claim.

12. Lexington Rubber Group, Inc. (“**LRGI**”) purchased a silicone product called Elastosil LR 3088/20 from Wacker. The Elastosil product was used as a raw material in the injection molding process in the Debtors’ connector seals business.

13. In approximately mid-2006, without advising LRGI of the change, Wacker altered the composition of the Elastosil product. The change resulted in a higher

concentration of large magnesium oxide particles in the product. The presence of these large particles in higher-than-usual concentrations caused excessive wear to LRGI's injection molds, expensive devices critical to the manufacturing process and impossible to replace on short notice.

14. The Wacker Elastosil LR 3088/20 product supplied to LRGI was defective due to the presence of high concentrations of large magnesium oxide particles.

15. The Wacker Elastosil LR 3088/20 product supplied to LRGI was not fit for its intended purpose.

16. Wacker knew, or should have known, that it was shipping Elastosil product to the Debtors with an increased concentration of large magnesium oxide particles.

17. Wacker knew, or should have known, that an increased concentration of large magnesium oxide particles would cause damage to the Debtors' injection molds.

18. Wacker failed to advise LRGI of the change in the Elastosil product.

19. It is the accepted custom and practice in the injection molding business for suppliers to notify manufacturers in advance of changes in the composition of raw materials because, among other reasons, injection molding is a high precision industry, end users have strict performance standards for rubber parts, and injection molds are sensitive to even minor variations in raw materials.

20. LRGI has been damaged by Wacker's delivery of materials that were defective and/or not fit for their intended purpose. As a result of the increased concentration of large magnesium oxide particles in the Elastosil LR 3088/20 product, LRGI suffered damages including, but not limited to:

- a. Costs to re-tool mold parts that suffered excessive wear;
- b. Lost business due to cancelled orders from a customer;
- c. Increased scrap costs;

- d. Purchase price of defective or unfit materials;
- e. Employee labor costs to inspect for and repair damaged parts and to investigate and trace the cause of the problem; and
- f. Permanent loss of good will with customers.

21. On account of its counterclaim, LRGI seeks damages from Wacker in an amount to be determined by the Court and set off, in whole or in part, from the Wacker Claim.

Reservation of Rights

22. The Debtors reserve their rights to amend this objection.

Notice

23. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have provided notice of this Objection to (i) the U.S. Trustee, (ii) the attorneys for the agents for the Debtors' prepetition lenders, (iii) the attorneys for the Debtors' postpetition lenders, (iv) the attorneys for the Creditors' Committee, (v) counsel for the plan investor, (vi) the current holder of the Wacker Claim, and (vii) all other parties that have requested notice in these chapter 11 cases (collectively, the "**Notice Parties**"). The Debtors submit that no other or further notice need be provided.

WHEREFORE the Debtors respectfully request the Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: July 20, 2010
New York, New York

/s/ Adam P. Storchak

Richard P. Krasnow
Adam P. Storchak

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

Exhibit A

Wacker Claim

FILED / RECEIVED

AUG 13 2008

EPIQ BANKRUPTCY SOLUTIONS, LLC

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

****Except that the claim may constitute a set-off or recoupment against any claim by the estate against CREDITOR.**

**ATTACHMENT TO PROOF OF CLAIM
OF WACKER CHEMICAL CROP.
In Re: Lexington Rubber Group, Inc.
Case No. 08-11156**

The documents supporting this claim are voluminous and they were attached to Wacker's original Proof of Claim filed on April 28, 2008. An additional copy of the documents supporting this claim will be made available upon request.

SHUMAKER

Shumaker, Loop & Kendrick, LLP

1000 Jackson Street 419.241.9000
Toledo, Ohio 43604-5573 419.241.6894 fax

www.slk-law.com

DAVID J. COYLE
419.321.1418
dcoyle@slk-law.com

August 12, 2008

**Via Federal Express
Overnight Mail**

Lexington Precision Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, NY 10017

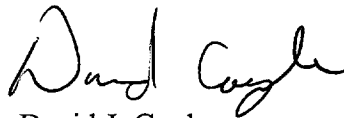
Re: In Re: Lexington Rubber Group, Inc.
Case No. 08-11156
Proof of Claim Amount: \$610,753.78
Our File No. **032746**

Dear Sir/Madam:

Enclosed please find the original and three (3) copies of a Proof of Claim to be filed on behalf of Wacker Chemical Corp. in the above-referenced matter. Please file the Proof of Claim and return file-stamped copies to the undersigned in the envelope provided.

If you have any questions, please contact me.

Very truly yours,



David J. Coyle

DJC/gaf
Enclosures

Express

From: Origin ID: TDZA (419)241-9000
Gladys Fischer
SHUMAKER, LOOP & KENDRICK, LLP
1000 JACKSON STREET
TOLEDO, OH 43604



SHIP TO: 000 000 0000

BILL SENDER

05/09/2000 02:11:24

**Lexington Precision Claims Processing
c/o Epig Bankruptcy Solutions, LLC
757 3RD AVE FRNT 3**

NEW YORK, NY 100172072

Ship Date: 12AUG08
ActWgt: 2 LB
System#: 5317389/INET8061
Account#: S *****

Delivery Address Bar Code



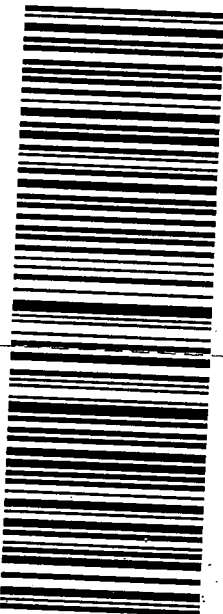
Ref # 032746
Invoice #
PO #
Dept #

TRK# 7905 5994 0148
0201

WED - 13AUG A1
PRIORITY OVERNIGHT

ZB OGS A

10017
NY-US
EWR



Page 1 of 2

Press Here. Press Here. Press Here. Press Here.

Exhibit B

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
	:
In re	:
	:
LEXINGTON PRECISION CORP., <u>et al.</u>,	:
	:
Debtors.	:
	:
-----X	

	Chapter 11 Case No.
	08-11153 (SCC)
	(Jointly Administered)

**ORDER GRANTING DEBTORS' OBJECTION TO PROOF OF
CLAIM FILED BY WACKER CHEMICAL CORP. (CLAIM NO. 246)**

Upon consideration of the objection, dated July 20, 2010 (the "Objection"),¹ of Lexington Precision Corporation and its wholly-owned subsidiary, Lexington Rubber Group, Inc., each as debtors and debtors-in-possession (together, the "Debtors"), to Proof of Claim No. 246 (the "Claim"), filed by Wacker Chemical Corp.; and the Court having jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Objection; the Court hereby finds and determines that, pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, due and proper notice has been provided to the Notice Parties; and no other or further notice is necessary; and the relief requested in the Objection is in the best interests of the Debtors, their estates, and creditors; and the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and therefore it is

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Epiq is authorized and directed to delete the Claim from the
official claims registry.

Dated: New York, New York
August __, 2010

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE